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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PATRICIA WOODSELL,

11 Plaintiff,

12 v.

13 EXPEDIA INC, et al.,

14 Defendants.

CASE NO. C19-0051JLR

ORDER GRANTING IN PART
AND DENYING IN PART
MOTION TO DISMISS

15 **I. INTRODUCTION**

16 Before the court is Defendants Expedia, Inc. (“Expedia”), EAN.com, LP (“EAN”),
17 Travelscape, LLC (“Travelscape”), and Hotels.com, L.P.’s (“Hotels.com”) (collectively,
18 “Defendants”) motion to dismiss Plaintiff Patricia Woodell’s putative class action
19 complaint. (MTD (Dkt. # 15).) Ms. Woodell opposes the motion. (Resp. (Dkt. # 37).)
20 The court has considered Defendants’ motion, all submissions filed in support of and in
21 opposition to the motion, the relevant portions of the record, and the applicable law.

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1 Being fully advised,¹ the court GRANTS in part and DENIES in part Defendants' motion
2 and DISMISSES Ms. Woodell's complaint. The court also GRANTS Ms. Woodell leave
3 to amend her complaint within 20 days of the date of this order.

4 II. BACKGROUND

5 In her putative class action complaint, Ms. Woodell alleges as follows:

6 Consumers book hotels online "primarily for convenience and in order to shop for
7 the best price." (Compl. (Dkt. # 1) ¶ 1.) Reservations.com, which is not a party to this
8 lawsuit, is an online booking company. (*Id.* ¶¶ 2, 21.) Reservations.com obtains its hotel
9 room inventory from third-party suppliers such as Expedia and its subsidiaries, including
10 EAN, Travelscape, and Hotels.com. (*Id.* ¶¶ 2, 22.) Hotels give Defendants the right to
11 sell their room reservations at retail rates generally set by Defendants. (*Id.* ¶ 3.)

12 When a consumer purchases a room reservation on Reservations.com's website or
13 through its call center, the consumer pays a "Service Fee" of \$14.99 per room to
14 Reservations.com. (*Id.* ¶¶ 4, 29, 32.) In addition, the consumer pays an amount to
15 Defendants, which is generally labelled as "Taxes & Fees." (*See id.* ¶¶ 4, 29) Ms.
16 Woodell alleges that the "Taxes & Fees" "are represented to be monies 'the hotels must
17 pay to the government,'" but "even without this representation[,], a reasonable consumer
18 would understand 'Taxes & Fees' to be monies owed to the government." (*Id.* ¶ 4, 33,
19 34.) When Reservations.com sells a room reservation from Defendants' inventory, the

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21 ¹ No party has requested oral argument (*see* MTD; Resp.), and the court does not
22 consider oral argument to be helpful to its disposition of the motion, *see* Local Rules W.D.
Wash. LCR 7(b)(4).

1 consumer's credit card is charged \$14.99 by Reservations.com, and the balance—the
2 room charge plus the "Taxes & Fees" charge—is charged by Defendants. (*Id.* ¶¶ 4, 35.)
3 Ms. Woodell's complaint addresses solely the "Taxes & Fees" charges collected by
4 Defendants. (*Id.* ¶ 5.)

5 Ms. Woodell alleges that "[c]ontrary to Reservations.com's representations and/or
6 the expectations of consumers, the 'Taxes & Fees' charged by Defendants are not the
7 actual taxes and fees remitted to governmental authorities but contain additional amounts
8 surreptitiously added by Defendants (the 'tax overcharge')." (*Id.* ¶ 6; *see also id.* ¶ 39.)

9 Ms. Woodell generally alleges that Defendants "populate[]" the room rates and "Taxes &
10 Fees" fields on the Reservation.com website and "unlawfully collect and retain the
11 'Taxes & Fees' overcharge." (*Id.* ¶¶ 9, 10; *see also id.* ¶ 23.) Ms. Woodell specifically
12 alleges that "the room rates and 'Taxes & Fees' charged on the Reservations.com website
13 are pass-through line items established and collected by Expedia." (*Id.* ¶ 36.) She
14 further generally alleges that Defendants remit some of the "Taxes & Fees" charge to the
15 hotels, or sometimes directly to the governmental taxing authorities, but they retain the
16 tax overcharge. (*Id.* ¶¶ 10, 23.) More specifically, however, Ms. Woodell asserts that
17 "Expedia . . . remits the applicable taxes and fees to either the hotels or, in some
18 jurisdictions, to the government," and "Expedia pockets the tax overcharge as additional
19 profit (above and beyond the 'markup' it already makes on the room price)." (*Id.* ¶¶ 36,
20 39.)

21 Ms. Woodell has not sued Reservations.com. (*See generally id.*) Indeed, she
22 admits that Reservations.com is not involved in the collection of the "Taxes & Fees"

1 charge at issue in this case or the remission process. (*Id.* ¶ 23.) However, Ms. Woodell
2 contends that Defendants have “engaged and continue to engage in a scheme to
3 unlawfully collect overcharges of taxes and fees through the use of online travel agents,
4 including but not limited to, Reservations.com.” (*Id.* ¶ 40.) She also alleges “[o]n
5 information and belief, Reservations.com has, at all relevant times hereto and continuing
6 through the present, been a knowing and willing participant in this scheme with
7 [Defendants].” (*Id.*)

8 Concerning her specific experience, Ms. Woodell alleges that on September 12,
9 2016, she booked a hotel room in Boise, Idaho, on the Reservations.com website, and
10 paid a total of \$111.12 for the reservation. (*Id.* ¶¶ 46, 52.) Two charges—totaling
11 \$111.12—appeared on her credit card statement. (*See id.* ¶¶ 49-50.) Ms. Woodell paid
12 \$14.99 for a “Service Fee” to Reservations.com, and \$96.23, which included \$81.41 for
13 the room and \$14.82 for “Taxes & Fees,” to Expedia. (*Id.* ¶¶ 47, 49-50.) Ms. Woodell
14 asserts that the total applicable taxes and fees that must be paid to the government for her
15 hotel reservation totaled \$6.51, and therefore she was overcharged by \$8.31. (*Id.* ¶ 48;
16 *see also id.* ¶ 8 (“Expedia subjected [Ms. Woodell] to a tax overcharge in 2016.”).) She
17 further alleges that because Reservations.com charges a \$14.99 per room “Service Fee,”
18 the difference between the “Taxes & Fees” charged and actual taxes paid to
19 governmental entities “cannot reasonably be understood to be for ‘services.’” (*Id.* ¶ 61.)
20 Ms. Woodell alleges that a similar tax overcharge is applied to every reservation through
21 Reservations.com that uses Expedia’s room inventory, resulting in millions of dollars of
22 overcharges annually throughout the United States. (*Id.* ¶¶ 53-63.)

1 Ms. Woodell alleges that the “Taxes & Fees” portion of her bill is charged in a
2 manner “[c]ontrary to Reservations.com’s representations and/or the expectations of
3 consumers.” (*Id.* ¶ 6; *see also id.* ¶ 39.) However, Ms. Woodell does not allege that she
4 noticed the “Taxes & Fees” charge at the time of booking, that the charge factored into
5 her decision to book the hotel room at issue, that she was confused by the charge, how
6 she interpreted the charge, or whether the charge would have made a difference in her
7 decision to book the hotel room if she had noticed it and understood it differently at the
8 time of booking. (*See generally id.*) As noted above, she alleges that consumers book
9 hotels online “primarily for convenience and in order to shop for the best price” (*id.* ¶ 1),
10 and she does not allege that any other considerations motivated her at the time she made
11 her booking on September 12, 2016 (*see generally id.*)

12 Ms. Woodell alleges that non-party Reservations.com has, “[a]t times,” explained
13 “Taxes & Fees” as follows:

14 The taxes are tax recovery charges we pay to our vendors. We retain our
15 service fees and compensation in servicing your travel reservation. *Amounts*
16 *displayed in the Taxes and Fees line for prepaid hotel transactions include*
17 *an estimated amount we expect the hotel to bill for applicable taxes,*
18 *government fees, and other charges that the hotels must pay to the*
19 *government.* Please note that you may also incur other charges that we do
20 not collect and are not included in the quotes price, such as hotel resort fees,
21 hotel energy surcharges, parking fees, pet fees, and incidental charges.
22 These amounts will be collected from you directly by the hotel unless
otherwise indicated on the site.

(*Id.* ¶ 33 (italics in complaint).) Ms. Woodell does not claim that she saw this alleged
misrepresentation or that it was on the Reservations.com website at the time of her

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1 booking. (*See generally id.*) She does not explain when or where Reservations.com
2 made this alleged misrepresentation. (*See generally id.*)

3 Ms. Woodell alleges that Reservations.com “hosts” its website and “does its own
4 marketing of its services.” (*Id.* ¶ 18.) She does not allege any communication, meeting,
5 agreement, or moment in time when Defendants and Reservations.com agreed to
6 coordinate regarding representations about the “Taxes & Fees” charge that appears on the
7 Reservations.com website. (*See generally id.*)

8 Ms. Woodell brings a claim under the Racketeer Influenced and Corrupt
9 Organizations Act (“RICO”), 18 U.S.C. § 1962(C)-(D). (Compl. ¶¶ 74-110.) In doing
10 so, she alleges that Defendants, along with Reservations.com and other entities,
11 “associated with, and conducted or participated in the affairs of, a RICO enterprise (the
12 ‘Tax Fraud Enterprise’), whose purpose was to deceive consumers into believing they
13 were paying a legitimate ‘Taxes & Fees’ charge.” (*Id.* ¶ 77.) She alleges that Defendants
14 and Reservations.com “operated an association-in-fact enterprise engaged in interstate
15 and foreign commerce, which was formed for the purpose of obtaining money from
16 consumers for inflated ‘Taxes & Fees’ payments, through which they conducted a pattern
17 of racketeering activity under 18 U.S.C. § 1961(4).” (Compl. ¶ 78.) Alternatively, she
18 alleges that non-party Reservations.com “constitutes a single legal entity ‘enterprise’
19 within the meaning of 18 U.S.C. § 1961(4), through which . . . Defendants conducted
20 their pattern of racketeering activity in the [United States].” (Compl. ¶ 79.) She also
21 alleges that Defendants committed at least two predicate acts of racketeering activity

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1 involving mail and wire fraud under 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire
2 fraud). (Compl. ¶¶ 94-110.)

3 In addition to her RICO claim, Ms. Woodell asserts a claim for violation of
4 Washington’s Consumer Protection Act (“CPA”), RCW ch. 19.86. (Compl. ¶¶ 132-40.)
5 She also asserts equitable claims of conversion (*id.* ¶¶ 111-16), unjust enrichment (*id.*
6 ¶¶ 117-24), and constructive trust (*id.* ¶ 125-31). Defendants move to dismiss each of
7 Ms. Woodell’s claims. (*See generally* MTD.) The court now considers Defendants’
8 motion.

9 III. ANALYSIS

10 A. Standard of Review

11 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal for “failure to
12 state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). When
13 considering a motion to dismiss under Rule 12(b)(6), the court construes the complaint in
14 the light most favorable to the nonmoving party. *Livid Holdings Ltd. v. Salomon Smith*
15 *Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). The court must accept all well-pleaded
16 facts as true and draw all reasonable inferences in favor of the plaintiff. *Wylar Summit*
17 *P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). The court,
18 however, is not required “to accept as true allegations that are merely conclusory,
19 unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State*
20 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

21 “To survive a motion to dismiss, a complaint must contain sufficient factual
22 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft*

1 | *v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
2 | 570 (2007)); *see also Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir.
3 | 2010). “A claim has facial plausibility when the plaintiff pleads factual content that
4 | allows the court to draw the reasonable inference that the defendant is liable for the
5 | misconduct alleged.” *Iqbal*, 556 U.S. at 677-78. “A pleading that offers ‘labels and
6 | conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’
7 | . . . Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further
8 | factual enhancement.’” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555, 557). General,
9 | conclusory allegations of wrong-doing that do not identify how each defendant
10 | purportedly engaged in the wrongful conduct and do not provide each defendant fair
11 | notice of the claims against them do not meet the Supreme Court’s *Iqbal/Twombly*
12 | pleading standard. *See Trice v. Damion*, No. 216CV01348MMDNJK, 2017 WL 187149,
13 | at *2 (D. Nev. Jan. 17, 2017) (citing *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555);
14 | *see also Doop v. Woodford*, No. 1:14CV01933 DLB PC, 2015 WL 2345314, at *2 (E.D.
15 | Cal. May 14, 2015) (“Plaintiff cannot simply group all Defendants together and allege,
16 | generally, that they violated his rights. Such statements do not meet the pleading
17 | requirements.”) (citing *Iqbal*, 556 U.S. at 678). Dismissal under Rule 12(b)(6) may also
18 | be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
19 | under a cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699
20 | (9th Cir. 1990).

21 | Claims of fraud are subject to the heightened pleading requirements of Federal
22 | Rule of Civil Procedure 9(b). *See Fed. R. Civ. P. 9(b)*. Under Rule 9(b), “a party must

1 state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P.
2 9(b). “Fraud can be averred by specifically alleging fraud, or by alleging facts that
3 necessarily constitute fraud (even if the word ‘fraud’ is not used).” *Vess v. Ciba-Geigy*
4 *Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003). Rule 9(b) requires that an allegation of
5 fraud be “specific enough to give defendants notice of the particular misconduct . . . so
6 that they can defend against the charge and not just deny that they have done anything
7 wrong.” *Id.* at 1106 (quoting *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993)). In
8 other words, an allegation of fraud “must be accompanied by ‘the who, what, when,
9 where, and how’ of the misconduct charged.” *Id.* (citing *Cooper v. Pickett*, 137 F.3d
10 616, 627 (9th Cir. 1997)). The plaintiff must identify “what is false or misleading about
11 the statement, and why it is false.” *Id.* (quoting *Decker v. GlenFed, Inc.*, 42 F.3d 1541,
12 1548 (9th Cir. 1994)).

13 **B. RICO**

14 Under RICO, a plaintiff must allege that the defendant participated in the conduct
15 of an enterprise through a pattern of racketeering activity that proximately caused the
16 plaintiff’s harm. *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997
17 (9th Cir. 2014). Defendants argue that Ms. Woodell’s RICO claim fails because she
18 inadequately alleges the following elements: (1) any racketeering activity; (2) a pattern
19 of such activity; (3) an enterprise; (4) that Defendants directed the conduct of an
20 enterprise; and (5) proximate causation. The court will consider each of these elements
21 in turn.

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1 1. Racketeering Activity

2 Ms. Woodell bases her RICO claim on mail and wire fraud as the alleged
3 underlying racketeering activity. (*See* Compl. ¶¶ 94-102); *see also* 18 U.S.C. §§ 1341
4 (mail fraud), 1343 (wire fraud). Because she bases her RICO claim on fraud, her
5 allegations must comply with Federal Rule of Civil Procedure 9(b), which requires that
6 circumstances constituting fraud be stated with particularity. Fed. R. Civ. P. 9(b); *see*
7 *Alan Neuman Prods, Inc. v. Albright*, 862 F.3d 1388, 1392-93 (9th Cir. 1989)
8 (concluding that a complaint failed to properly allege a RICO claim based on mail and
9 wire fraud because the allegations were not sufficiently particular to satisfy Rule 9(b));
10 *Bitton v. Gencor Nutrientes, Inc.*, 654 F. App'x 358, 363 (9th Cir. 2016) (“Circumstances
11 constituting fraud must be pleaded with particularity; that is also the case when alleged
12 fraud forms the predicate acts of a RICO claim.”) (internal quotation marks and citations
13 omitted); *Desoto v. Condon*, 371 F. App'x 822, 824 (9th Cir. 2010) (affirming the district
14 court’s dismissal of the plaintiff’s RICO claim because the allegations concerning the
15 predicate acts of mail and wire fraud were too vague and conclusory).

16 Defendants argue that Ms. Woodell fails to plead Defendants’ alleged racketeering
17 activity—mail and wire fraud violations—with sufficient particularity. “The mail and
18 wire fraud statutes are identical except for the particular method used to disseminate the
19 fraud, and contain three elements: (A) the formation of a scheme to defraud, (B) the use
20 of the mails or wires in furtherance of that scheme, and (C) the specific intent to
21 defraud.” *Eclectic Props. E.*, 751 F.3d at 997 (citing *Schreiber Distrib. Co. v. Serv-Well*
22 *Furniture Co., Inc.*, 806 F.2d 1393, 1399 (9th Cir. 1986)).

1 a. *Mail Fraud*

2 Nowhere in her complaint does Ms. Woodell allege any specific use of the mails
3 in furtherance of a fraudulent scheme. (*See generally* Compl.) At most, she generally
4 alleges:

5 [Defendants and Reservations.com] violated 18 U.S.C. § 1341 by sending
6 and receiving, and by causing to be sent and/or received, materials via U.S.
7 Mail or commercial interstate carriers for the purpose of executing the
unlawful scheme to design, manufacture, market, and sell hotel room
8 reservations by means of false pretenses, misrepresentations, promises, and
omissions.

9 (Compl. ¶ 97(a); *see also id.* ¶ 100 (“[Defendants and Reservations.com] also
10 communicated by U.S. Mail, by interstate facsimile, and by interstate electronic mail
11 with various other divisions of Expedia, Inc., and other third-party entities in furtherance
12 of the scheme.”).) Ms. Woodell must plead both the alleged fraud and facts relating to
13 the alleged use of the mails. *Vaugh v. Diaz*, No. 12-CV-1181 BEN JMA, 2013 WL
14 150487, at *3 (S.D. Cal. Jan. 14, 2013) (citing *Lancaster Comm. Hosp. v. Antelope*
15 *Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir. 1991)). General allegations concerning
16 the use of the mails is insufficient. *See Lancaster Comm. Hosp.*, 940 F.2d at 405
17 (finding that contentions regarding the use of the mails were too generalized to satisfy
18 Rule 9(b) where “no specific mailings are mentioned”); *Hill v. Opus Corp.*, 841 F. Supp.
19 2d 1070 (C.D. Cal. 2011) (“Courts have been particularly sensitive to Fed. R. Civ. Pro.
20 9(b)’s pleading requirements in RICO cases in which the ‘predicate acts’ are mail fraud
21 and wire fraud, and have further required specific allegations as to which defendant
22 caused what to be mailed . . . , and when and how each mailing . . . furthered the

1 fraudulent scheme” (citing *Gotham Print, Inc. v. Am. Speedy Printing Ctrs., Inc.*, 863 F.
2 Supp. 447, 457 (E.D. Mich. 1994)). Accordingly, the court dismisses Ms. Woodell’s
3 RICO claim predicated on the alleged racketeering activity of mail fraud.

4 *b. Wire Fraud*

5 The court next considers the adequacy of Ms. Woodell’s pleading concerning the
6 alleged racketeering activity of wire fraud. Specifically, Ms. Woodell alleges that
7 “the . . . ‘Taxes & Fees’ charged on the Reservations.com website are pass-through
8 items established and collected by Expedia.” (Compl. ¶ 23.) She also alleges that “the
9 amount charged by Expedia on Reservations.com bookings as . . . ‘Taxes & Fees’ . . . is
10 significantly more than the sum actually owed to the government for ‘applicable taxes,
11 government fees, and other charges that he hotels must pay to the government.’” (*Id.*
12 ¶ 39.) She further alleges, on information and belief, that “Expedia pockets the tax
13 overcharge as additional profit (above and beyond the ‘markup’ it already makes on the
14 room price).” (*Id.*) Finally, she alleges that this scheme has been repeated millions of
15 times through the Reservations.com website. (*Id.* ¶ 12, *see also id.* ¶¶ 53-63.) These
16 allegations meet the Rule 9(b) pleading requirement of “sufficient particularity” for
17 asserting a predicate act of wire fraud in a RICO claim against Expedia.

18 In other portions of the complaint, however, Ms. Woodell charges Defendants
19 collectively with this same conduct. (*See, e.g., id.* ¶ 9 (“[T]he room rates and ‘Taxes &
20 Fees’ are fields populated on the Reservations.com website by Defendants. At the time
21 of booking, Defendants collect the ‘Taxes & Fees’ charge directly from
22 Reservations.com’s customers, and Defendants later remit the (much lower) actual taxes

1 and fees to either the hotels or—in some jurisdictions—directly to the government.”); *id.*
2 ¶ 10 (“As part of the tax overcharge scheme, Defendants unlawfully collect and retain
3 the ‘Taxes & Fees’ overcharge.”); *see also id.* ¶¶ 94-110 (alleging that Defendants and
4 Reservations.com engaged in wire fraud without attributing any specific conduct to any
5 specific Defendant.) “Rule 9(b) does not allow a complaint to merely lump multiple
6 defendants together but ‘require[s] plaintiffs to differentiate their allegations when suing
7 more than one defendant . . . and inform each defendant separately of the allegations
8 surrounding his alleged participation in the fraud.” *Swartz v. KPMG LLP*, 476 F.3d 756,
9 764-65 (9th Cir. 2007) (quoting *Haskin v. R.J. Reynolds Tobacco Co.*, 995 F. Supp.
10 1437, 1439 (M.D.Fla.1998) (citation, quotation omitted)). At a minimum, a plaintiff
11 must identify the role of each defendant in the alleged fraudulent scheme. *Id.* at 765.
12 Thus, although Ms. Woodell’s specific allegations concerning Expedia are sufficient, her
13 generalized allegations—lumping the three remaining Defendants together with respect
14 to the same conduct—are not.

15 Ms. Woodell counters that the Rule 9(b) standard may be “relaxed as to matters
16 within the opposing party’s knowledge.” (Resp. at 9 (quoting *Moore v. Kayport*
17 *Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989)).) She also argues that she
18 alleges with specificity the roles each Defendant played (*see* Resp. at 9), as follows: For
19 Travelscape, she alleges that it “contracts with hotel properties for room inventory at
20 wholesale prices,” which, in turn, is offered for sale by Reservations.com. (Comp.
21 ¶¶ 19, 83.) She also alleges that Travelscape “administers payments for reservations”
22 made through Reservations.com. (*Id.*) For EAN, she alleges that it “contracts with . . .

1 | Reservations.com . . . to provide . . . third parties with hotel room inventory” obtained by
2 | Expedia, Travelscape, and Hotels.com. (*Id.* ¶¶ 18-20, 82.) For Hotels.com, Ms.
3 | Woodell alleges that it “provides room inventory to Reservations.com and/or collects
4 | monies paid for room reservations sold by Reservations.com.” (Compl. ¶ 20.)

5 | However, the “relaxation” of the Rule 9(b) particularized pleading requirement
6 | for matters within the opposing party’s knowledge “does not nullify Rule 9(b).” *See*
7 | *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993). Indeed, “a plaintiff who makes
8 | allegations on information and belief must state the factual basis for this belief.” *Id.*
9 | Alleging “no more than suspicious circumstances” is insufficient. *Id.* Here, Ms.
10 | Woodell has not even alleged suspicious circumstances with respect to Travelscape,
11 | EAN, and Hotels.com. The specific conduct she alleges regarding each of these
12 | Defendants does not inform them of their “alleged participation in the fraud,” *Swartz*,
13 | 476 F.3d at 764-65, which in this case is Expedia’s purported misrepresentation on
14 | Reservations.com’s website regarding the “Taxes & Fees” charge. Rather, her
15 | allegations describe nothing more than legitimate business conduct—contracting for
16 | hotel room inventory at wholesale prices and administering payments for reservations.
17 | (*See* Compl. ¶¶ 18-20, 82-83.) Accordingly, the court concludes that Ms. Woodell has
18 | failed to plead wire fraud as a predicate act for her RICO claim with sufficient
19 | particularity to satisfy Rule 9(b) for Defendants Travelscape, EAN, and Hotels.com and,
20 | therefore, grants Defendants’ motion with respect to these Defendants.²

21 |
22 | ² The authorities Ms. Woodell cites are distinguishable. In *In re Volkswagen*, No. MDL
2672 CRB (JSC), 2017 WL 4890594, at *10 (N.D. Cal. Oct. 30, 2017), *In re*

1 2. A Pattern of Racketeering Activity

2 A “pattern” of racketeering activity requires “at least two acts of racketeering
3 activity” within ten years of each other, 18 U.S.C. § 1961(5), and a related “threat of
4 continuing activity,” *Howard v. Am. Online, Inc.*, 208 F.3d 741, 746 (9th Cir. 2000).
5 Defendants assert that “[f]or the same reasons she failed to adequately allege any
6 racketeering activity, [Ms.] Woodell fails to adequately allege a *pattern* of racketeering
7 activity.” (MTD at 9.)

8 With respect to Expedia, the court disagrees. Ms. Woodell alleges that as many as
9 four million rooms were booked on Reservation.com’s website during the class period
10 and a “substantial portion of these rooms came from Expedia’s inventory.” (Compl. ¶ 67;
11 *see also id.* ¶ 53 (“On information and belief, a similar [tax overcharge] is applied to
12 every reservation booked through Reservations.com that uses Expedia’s room inventory,
13 and Expedia is illegally retaining millions of dollars in overcharges annually as a
14 result.”).) These allegations plausibly allege a “pattern” of racketeering activity for
15 Expedia. Of course, because the court has held that Ms. Woodell failed to adequately
16 plead any racketeering activity for Defendants Travelscape, EAN, and Hotels.com, *see*
17 *supra* § III.B.2, she logically also fails to allege a pattern of such activity for them.

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19 *Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, & Product Liability Litigation*, 295
20 F. Supp. 3d 927, 977 (N.D. Cal. 2018), and *In re Duramax Diesel Litigation*, 298 F. Supp. 3d
21 1037, 1057 (E.D. Mich. 2018), the courts excused the plaintiffs’ “lumping together” of certain
22 defendants due to the manner in which those defendants “chose[] to operate” by blurring the
legal boundaries between the corporate subsidiaries. Thus, under those circumstances, it was
reasonable for the courts to plausibly infer that the knowledge of one defendant could be
attributed to other defendants. *See, e.g., In re Volkswagon*, 2017 WL 4890594, at * 11. That
type of corporate integration or blurring of corporate entities is not alleged here. (*See generally*
Compl.)

1 Accordingly, the court grants this portion of Defendants’ motion for Travelscape, EAN,
2 and Hotels.com, but denies it for Expedia.

3 3. RICO Enterprise

4 Defendants also argue that Ms. Woodell fails to adequately allege a RICO
5 Enterprise. (MTD at 9-11.) RICO enterprises come in two varieties: (1) an
6 association-in-fact, or (2) a “legal entity.” *See* 18 U.S.C. § 1961(4). An
7 association-in-fact is a “group of persons associated together for a common purpose of
8 engaging in a course of conduct.” *Boyle v. United States*, 556 U.S. 938, 946 (2009). A
9 “legal entity” applies to the “infiltration of legitimate businesses [the enterprise] by
10 racketeers [the defendants].” *River City Mkts., Inc. v. Fleming Foods W., Inc.*, 960 F.2d
11 1458, 1461 (9th Cir. 1992) (citing *United States v. Turkette*, 452 U.S. 576, 580 (1981)).
12 Ms. Woodell alleges both types of enterprises in the alternative. (*See* Compl. ¶¶ 78-79.)

13 *a. Association-in-fact*

14 To plead an association-in-fact enterprise, Ms. Woodell must allege that the
15 association-in-fact: (1) has a common purpose, (2) is an ongoing organization, and (3)
16 its various associates function as a continuing unit. *See Odom v. Microsoft*, 486 F.3d
17 541, 552-53 (9th Cir. 2007). Further, Ms. Woodell “must allege that the group engaged
18 in enterprise conduct distinct from their own affairs.” *Comm. to Protect our Agric.*
19 *Water v. Occidental Oil & Gas Corp.*, 235 F. Supp. 3d 1132, 1173 (E.D. Cal. 2017)
20 (citing *Odom*, 486 F.3d at 549)). Ms. Woodell alleges that Defendants and
21 Reservations.com formed an association-in-fact enterprise. (*See* Compl. ¶ 86.) As

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1 discussed below, Ms. Woodell fails to adequately allege that this putative
2 association-in-fact has a common purpose.

3 Ms. Woodell pleads that Defendants and Reservations.com “associated for the
4 common purpose of obtaining tax overpayments from consumers.” (*Id.* ¶ 85.) However,
5 this and other similar, conclusory allegations fall short of the pleading standard.³ Except
6 for the allegation that Expedia established and collected the “Taxes & Fees” charge as
7 “pass-through line items” on Reservations.com’s website (*id.* ¶ 36), the complaint
8 contains no specific factual allegations that any other Defendant acted with an objective
9 unrelated to ordinary business aims (*see generally id.*). Ms. Woodell’s formulaic,
10 conclusory allegations concerning these Defendants⁴ are insufficient to create facial
11 plausibility concerning an association-in-fact. *See Iqbal*, 556 U.S. at 678. Indeed, Ms.
12 Woodell admits in her complaint that the alleged enterprise “functioned by selling hotel
13 room reservations to the consuming public,” and that such “bookings are legitimate
14 transactions.” (*Id.* ¶ 86; *see also id.* ¶¶ 87 (alleging that the enterprise “involved
15 commercial activities . . . including the marketing, promotion, advertisement, and sale of
16 hotel room reservations throughout the country, and the receipt of monies from the hotel
17 bookings.”); 92 (“The enterprise involved commercial activities . . . such as the

18 ³ (*See also* Compl. ¶ 86 (“Expedia and its co-conspirators, through their illegal Tax Fraud
19 Scheme, engaged in a pattern of racketeering activity, which involves a fraudulent scheme to
20 increase revenue for Expedia and the other entities and individuals associated-in-fact with the
Enterprise’s activities through the illegal scheme to collect tax overpayments.”).)

21 ⁴ (*See, e.g.,* Compl. ¶ 78 (alleging that Defendants and Reservations.com “operated an
22 association-in-fact enterprise . . . which was formed for the purpose of obtaining money from
consumers for inflated ‘Taxes & Fees’ payment, through which they conducted a pattern of
racketeering activity”).)

1 marketing, promotion, advertisement, and sale of hotel room reservations throughout the
2 country, and the receipt of monies from those sales.”.)

3 Allegations that are consistent with ordinary business activities or purposes are
4 insufficient when pleading an association-in-fact RICO enterprise. *See In re Jamster*
5 *Mktg. Litig.*, No. 05CV0819 JM (CAB), 2009 WL 1456632, at *5 (S.D. Cal. May 22,
6 2009) (finding RICO claims were not adequately pleaded because, after plaintiff’s legal
7 conclusions were set aside, all that remained was “conduct consistent with ordinary
8 business conduct and an ordinary business purpose”); *see also Gomez v. Guthy-Renker,*
9 *LLC*, No. EDCV1401425JGBKKX, 2015 WL 4270042, at *8-9 (C.D. Cal. July 13,
10 2015) (finding that a routine contract for services did not constitute a distinct enterprise);
11 *cf. Odom*, 486 F.3d at 543 (finding a RICO enterprise’s common purpose was
12 adequately pleaded where the complaint alleged specific facts describing the fraudulent
13 means used to carry out the scheme). Where the alleged association-in-fact is formed
14 through routine contracts for services, the “common purpose” element is unmet because
15 the entities are pursuing their own individual economic interests, rather than a shared
16 purpose. *See Gomez*, 2015 WL 4270042, at *9 (citing *In re Countrywide Fin. Corp.*
17 *Mortg.-Backed Sec. Litig.*, No. 2:11-CV-07166-MRP, 2012 WL 10731957, at *8 (C.D.
18 Cal. June 29, 2012) (“[F]rom the face of the [amended complaint] it appears that each of
19 the non-parties identified by [the plaintiff] entered into a business relationship for their
20 own commercial reasons. Even if . . . the non-parties’ actions assisted [the defendant] . .
21 . the [amended complaint] makes clear that the assistance was in response to each
22 entity’s own business incentives. Parties that enter commercial relationships ‘for their

own gain or benefit’ do not constitute an ‘enterprise.’”).) Based on the foregoing authorities, the court concludes that Ms. Woodell fails to adequately allege a “common purpose” for her association-in-fact. *See Odom*, 486 F.3d at 552-53. Accordingly, the court grants this portion of Defendants’ motion.

b. Legal Entity

Ms. Woodell alternatively argues that non-party Reservations.com is a single legal entity enterprise through which Defendants conducted a pattern of racketeering activity. (See Resp. at 13.) Insofar as 18 U.S.C. § 1961(4) defines an “enterprise” to include any “partnership, corporation . . . or other legal entity . . .,” Ms. Woodell is correct. *See Gov’t Emps. Ins. Co. v. KJ Chiropractic Ctr. LLC*, No. 612CV1138ORL40DAB, 2015 WL 12839139, at *2 (M.D. Fla. Feb. 16, 2015) (“Under the statute, it cannot be disputed that [the corporate defendant] constitutes an enterprise within the meaning of 18 U.S.C. § 1961(4) because it is a legal entity.”). Accordingly, the court denies this portion of Defendants’ motion. The difficulty with this allegation, however, arises in the next element of Ms. Woodell’s RICO claim—namely, whether Defendants “conduct[ed] or participate[d], directly or indirectly, in the conduct of such enterprise’s affairs.” *See* 18 U.S.C. § 1964(c).

4. Directed the Conduct of a RICO Enterprise

The “conduct” element of a RICO claim requires Ms. Woodell to allege that a defendant has “some part in the directing of the enterprise’s affairs.” *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). Ms. Woodell fails to allege facts supporting a plausible theory that Defendants “participated in the conduct of the ‘enterprise’s affairs,’

1 not just their *own* affairs.” *See id.* at 185 (quoting 18 U.S.C. § 1962(c)) (emphasis in
2 *Reves*); *see also id.* (holding that “to conduct or participate, directly or indirectly, in the
3 conduct of the enterprise’s affairs” under 18 U.S.C § 1962(c), requires “participat[ing] in
4 the operation or management of the enterprise itself”).

5 Once again, at most, Ms. Woodell alleges that Expedia establishes and collects the
6 “Taxes & Fees” charge as “pass-through line items” on Reservations.com’s website.
7 (*See* Compl. ¶ 36.) This alleged action does not amount to participation in the operation
8 or management of Reservations.com as a “legal entity” enterprise or Ms. Woodell’s
9 alleged association-in-fact enterprise. This is particularly so in light of her allegations
10 that Reservations.com hosts its own website, “does its own marketing of its services,”
11 and obtains its inventory of hotel reservations through multiple third-party suppliers and
12 not just through Defendants. (*Id.* ¶¶ 2, 18, 22-23, 82.) Ms. Woodell’s remaining
13 allegations are all too general and conclusory to meet the pleading standard and raise this
14 element of her claim from the merely possible to the plausible.⁵ *See Iqbal*, 556 U.S. at
15 678.

16 Specifically, Ms. Woodell has not adequately alleged that Defendants’ actions
17 “were undertaken on behalf of the *enterprise* as opposed to on behalf of [Defendants] in
18 their individual capacities, to advance their individual self-interests.” *United Food &*

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20 ⁵ (*See, e.g.,* Compl. ¶¶ 77 (alleging that Defendants “were associated with, and conducted
21 or participated in the affairs of, a RICO enterprise . . . , whose purpose was to deceive consumers
22 into believing they were paying a legitimate ‘Taxes & Fees’ charge.”); 78 (alleging Defendants
“operated an association-in-fact enterprise”); 90 (alleging Defendants “participated in the
operation and management of [the enterprise] by directing its affairs”).)

1 *Commercial Workers Unions & Emp'rs. Midwest Health Benefits Fund v. Walgreen Co.*,
2 719 F.3d 849, 854 (7th Cir. 2013). In *Walgreen*, an employee health benefit fund alleged
3 that a pharmaceutical company and drug manufacturer engaged in a scheme to defraud
4 insurers by filling prescriptions for generic drugs with more expensive dosages than
5 prescribed, in violation of RICO. *Id.* at 850. The *Walgreen* court explained that “[t]he
6 complaint d[id] not allege, for instance, that officials from either company involved
7 themselves in the affairs of the other,” among other things, but instead defendants’
8 interactions “show[ed] only that the defendants had a commercial relationship.” *Id.* at
9 855. The court finds this analysis persuasive here and concludes that Ms. Woodell fails
10 to adequately allege that Defendants directed the affairs of a RICO enterprise.
11 Accordingly, the court grants this portion of Defendants’ motion.

12 5. Proximate Causation

13 “[A] plaintiff may sue under [RICO] only if the alleged RICO violation was the
14 proximate cause of the plaintiff’s injury.” *Anza v. Ideal Steel Supply Co.*, 547 U.S. 451,
15 452 (2006); *see also Ally Bank v. Castle*, No. 11-CV-896 YGR, 2012 WL 3627631, at
16 *12 (N.D. Cal. Aug. 20, 2012) (“[T]he plaintiff’s injury must be proximately caused by
17 defendant’s commission of a predicate act, not by some other conduct of the defendant.”)
18 “Although proximate cause, not reliance, is the essential element of statutory standing
19 under RICO, proving reliance is necessary where it is integral to [the plaintiff’s] theory of
20 causation.” *Hoffman v. Zenith Ins. Co.*, 487 F. App’x 365, 365 (9th Cir. 2012) (citing
21 *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 659 (2008)); *see Negrete v. Allianz*
22 *Life Ins. Co. of N. Am.*, 287 F.R.D. 590, 606 (C.D. Cal. 2012) (“Without proving reliance

1 in some form, plaintiffs will be unable to demonstrate the causal linkage between the
2 defendant’s alleged misrepresentations and the class members’ injuries.”).

3 Ms. Woodell alleges that a “reasonable consumer” would expect that a charge for
4 “Taxes & Fees” would consist of “amounts imposed by taxing authorities.” (Comp.
5 ¶ 34.) She alleges that she was “overcharged” \$8.31 because she paid \$14.82 in “Taxes
6 & Fees” when only \$6.51 was due to the government. (*Id.* ¶¶ 47-48.) However, she does
7 not allege that she read or even noticed the “Taxes & Fees” charge at the time she made
8 her reservation. (*See id.* ¶¶ 46-53 (describing Ms. Woodell’s alleged experience using
9 Reservations.com).) She does not allege that the charge would have affected her
10 transaction if she had noticed it or what she would have interpreted the phrase to mean if
11 she had seen it. (*See id.*) She does not allege that she would not have completed the
12 transaction had she understood that not all of the \$14.82 listed under “Taxes & Fees”
13 would be paid to a governmental entity or that a portion of the \$14.82 would be retained
14 by Expedia. (*See id.*) In short, she does not plead that, except for the alleged
15 misrepresentation concerning “Taxes & Fees,” she would not have suffered an injury. As
16 a result, the court concludes that Ms. Woodell fails to adequately allege proximate cause.

17 Ms. Woodell nevertheless argues that, under the Supreme Court’s decision in
18 *Bridge*, “there is no reliance requirement . . . as a person can be injured by reason of a
19 pattern of . . . mail fraud even if he has not relied on any misrepresentations”

20 (Resp. at 19 (citing *Bridge*, 553 U.S. at 649) (internal quotation marks omitted).)

21 Although this may be true, the Supreme Court also acknowledged that “[i]n most cases,
22 the plaintiff will not be able to establish even but-for causation if no one relied on the

misrepresentation.” *Bridge*, 553 U.S. 658. Where a plaintiff’s theory of causation depends on reliance, reliance is required to establish causation. *See Hoffman*, 487 F. App’x at 365. Ms. Woodell nevertheless attempts to clear the but-for causation hurdle by arguing that she relied on the “legitimacy” of the “Taxes & Fees” charge. (Resp. at 19 (citing Compl. ¶¶ 106-07).) Yet, she never alleges that she would not have made the reservation, submitted her payment, or taken any other action had she known that a portion of the “Taxes & Fees” charge was illegitimate. (*See generally* Compl.)

Ms. Woodell also attempts to recast her theory as one of omission—rather than an affirmative misrepresentation—arguing that she should be entitled to a presumption of reliance. (Resp. at 19, 22-23.) However, the presumption of reliance has typically been applied in securities fraud cases where a defendant is required to disclose something and does not, so the plaintiff is presumed to have relied on the fact that there was no disclosure. *See Poulos v. Caesars World, Inc.*, 379 F.3d 654, 666 (9th Cir. 2004). Even if the presumption applies outside of that context, it does not apply to cases involving affirmative representations or “mixed claims” of representations and omissions. *Id.* at 667 (holding that there is no for presumption of reliance for a RICO claim that “cannot be characterized primarily as claims of omission”). Ms. Woodell’s RICO claim depends on the alleged affirmative misrepresentation of the “Taxes & Fees” charge. Thus, her theory is at best “mixed” between alleged misrepresentations and omissions. Accordingly, the court concludes that a presumption of reliance is inapplicable. Because Ms. Woodell fails to adequately plead that her \$8.31 injury was proximately caused by Defendants’

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1 purported RICO violation, the court grants Defendants’ motion and dismisses her RICO
2 claim.

3 **C. CPA Claim**

4 To state a claim under the CPA, Ms. Woodell must allege: (1) an unfair or
5 deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public
6 interest, (4) injury to a person’s business or property, and (5) causation. *Panag v.*
7 *Farmers Ins. Co.*, 204 P.3d 885, 889 (Wash. 2000) (citing *Hangman Ridge Stables, Inc.*
8 *v. Safeco Title Ins. Co.*, 719 P.3d 531, 535 (Wash. 1986)). Defendants argue that Ms.
9 Woodell fails to adequately plead the first, third, and fifth elements. (MTD at 14-18.)
10 The court considers these elements in turn.

11 1. Unfair or Deceptive Act

12 An unfair or deceptive act is one undertaken with “a capacity to deceive a
13 substantial portion of the public.” *Saunders v. Lloyd’s of London*, 779 P.2d 249, 256
14 (Wash. 1989) (quoting *Hangman Ridge*, 719 P.2d at 535). Ms. Woodell relies on the
15 same factual allegations to underpin her CPA claim as she does to underpin her RICO
16 claim—alleged misrepresentation regarding “Taxes & Fees.” (See, e.g., Compl. ¶¶ 132-
17 40.) Thus, just as Rule 9(b)’s heightened pleading standard applies to Ms. Woodell’s
18 allegations concerning mail and wire fraud, *see supra* § III.B.1., those same heightened
19 pleading standards apply to Ms. Woodell’s allegations of the unfair or deceptive act
20 underpinning her CPA claim. For example, in *Fidelity Mortgage Corp. v. Seattle Times*
21 *Co.*, 213 F.R.D. 573 (W.D. Wash. 2003), the plaintiff claimed that the defendant violated
22 the CPA by publishing “false, deceptive, and/or misleading Interest Rates.” *Id.* at 574.

1 The court explained that, “[e]ven with regard to complaints that do not specifically plead
2 fraud, the Ninth Circuit has consistently held that cases that are ‘grounded in fraud’ or
3 ‘sound in fraud’ must satisfy the particularity requirement of Rule 9(b).” *Id.* at 575.
4 Thus, although Ms. Woodell avoids using the term “fraud” in describing her CPA claim
5 (*see* Compl. ¶¶ 132-40), her CPA allegations are still governed by the heightened Rule
6 9(b) standard, *see Anderson v. Clow (In re Stac Elecs. Sec. Litig.)*, 89 F.3d 1399, 1405
7 n.2 (9th Cir. 1996) (noting that the failure to use the word “fraud” does not change the
8 nature of the claim).

9 The court agrees with Ms. Woodell that the alleged mislabeling of the “Taxes &
10 Fees” charge could constitute an unfair or deceptive act under the CPA. (*See* Resp. at 21
11 (citing *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 170 P.3d 10, 19
12 (Wash. 2007) (holding that the defendant engaged in an unfair or deceptive act or
13 practice as a matter of law when it mislabeled a surcharge).) However, although Ms.
14 Woodell pleads with particularity Expedia’s involvement in this alleged deceptive act,
15 *see supra* § III.B.1 (citing Compl. ¶¶ 12, 23, 39), her collective and generalized
16 allegations concerning the remaining Defendants are insufficient under Rule 9(b), *see*
17 *generally id.* Thus, for the same reasons that the court concluded that Ms. Woodell’s
18 allegations concerning the alleged “Taxes & Fees” misrepresentation meet Rule 9(b)’s
19 pleading requirements for her RICO claims against Expedia, but not for her RICO claim
20 against the other Defendants, *see supra* § III.B.1, the court also so concludes here
21 concerning this element of her CPA claim.

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1 2. Impact on the Public Interest

2 Ms. Woodell can establish impact on the public interest by showing that the
3 conduct “injured other persons,” or even “had the capacity to injure other persons.”
4 RCW 19.86.093. The court agrees with Ms. Woodell that she has not alleged an
5 “essentially private dispute.” *See Shugart v. GYPSY Official No. 251715, its Engines,*
6 *Mach., Appurtenances*, No. 2:14-CV-1923RSM, 2015 WL 1965375, at *3 (W.D. Wash.
7 May 1, 2015) (“Where a transaction can be characterized as essentially a private dispute
8 rather than a consumer transaction, it may be difficult to show a public interest in the
9 subject matter.”) (internal quotations and citations omitted). Rather, she has alleged
10 hundreds of thousands of similar transactions using the same alleged “Taxes & Fees”
11 misrepresentation. (Compl. ¶¶ 8, 67.) These allegations are sufficient to meet this
12 element of her CPA claim. The court, therefore, denies this portion of Defendants’
13 motion.

14 3. Proximate Causation

15 Proximate cause is a required element of a CPA claim. *See Hangman Ridge*, 719
16 P.3d at 539 (“A causal link is required between the unfair or deceptive acts and the injury
17 suffered by plaintiff.”). As noted above in the court’s discussion of proximate causation
18 of Ms. Woodell’s RICO claim, Ms. Woodell does not allege that she read or even noticed
19 the “Taxes & Fees” charge, that the phrase would have affected her booking had she
20 noticed it, what she would have interpreted the phrase to mean had she seen it, that she
21 would not have completed the booking had she understood that Expedia would retain a
22 portion of the amount listed as “Taxes & Fees,” or that she would have taken any other

1 course of action other than the one she did. *See supra* § III.B.5; (*see also* Compl.
2 ¶¶ 46-53 (describing Ms. Woodell’s alleged experience booking a hotel room through
3 Reservations.com).) In other words, she does not allege that, except for Defendants’
4 alleged deceptive act, the outcome of her booking would have been any different. Just as
5 the court concluded that Ms. Woodell failed to plead proximate cause for her RICO
6 claim, *see supra* § III.B.5, the court similarly concludes that she fails to plead proximate
7 cause for her CPA claim, as well.

8 Ms. Woodell nevertheless argues that the Washington Supreme Court’s decision
9 in *Indoor Billboard/Washington* stands for the proposition that payment of an invoice
10 alone may be sufficient for proximate causation where the invoice contains an alleged
11 misrepresentation even without reliance. (*See* Resp. at 22-23 (citing *Indoor*
12 *Billboard/Wash.*, 170 P.3d at 22.) Although true, the *Indoor Billboard/Washington* court
13 also expressly rejected the plaintiff’s argument that the court should “adopt a per se rule
14 and hold that payment of [the defendant’s] invoice is per se sufficient to establish the
15 proximate cause of plaintiff’s damages . . . because mere payment of an invoice may not
16 establish a causal connection between the unfair or deceptive act or practice and
17 plaintiff’s damages.” *Id.* Instead, the court formulated the test for proximate cause as
18 follows: “A plaintiff must establish that, but for the defendant’s unfair or deceptive
19 practice, the plaintiff would not have suffered an injury.” *Id.* As discussed above,
20 because Ms. Woodell does not allege that, except for Defendants’ alleged deceptive act,
21 the outcome of her booking would have been any different, she does not overcome this
22 pleading hurdle.

Further, in *Indoor Billboard/Washington*, the discussion of proximate cause arose in a distinct factual context—the plaintiff knew about and allegedly relied on the alleged misrepresentation, but independently investigated the alleged misrepresentation and decided to pay the invoice anyway. *Id.* at 22-23. “Because the record was insufficient to determine whether the CPA plaintiff would have paid the surcharge notwithstanding the deceptive billing practice (the parties disputed whether the plaintiff knowingly agreed to pay the charge), the court concluded a material issue of fact existed as to causation.” *Panag v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 900 (Wash. 2009) (interpreting *Indoor Billboard/Washington*). Therefore, “*Indoor Billboard[/Washington]* . . . holds that when the alleged injury is payment of an amount not actually owed, a plaintiff must prove the deceptive billing practice induced the payment to establish causation.” *Id.* Merely alleging that Ms. Woodell paid the total amount charged for her hotel booking on Reservations.com does not establish this link. And, as discussed above, Ms. Woodell has not alleged any facts that otherwise establish this causal link. The court concludes that Ms. Woodell has not adequately alleged proximate causation for her CPA claim and, therefore, grants this portion of Defendants’ motion.

D. Conversion

Defendants assert that Ms. Woodell’s claim for conversion should be dismissed because “[a]n ‘authorized’ payment by the payor is not the proper subject of the tort of conversion under Washington law. (MTD at 18 (citing *Alhadeff v. Meridian on Bainbridge Island, LLC*, 220 P.3d 1214 (Wash. 2009))).) Ms. Woodell does not respond to this portion of Defendants’ motion and, indeed, implicitly concedes that Defendants’

1 motion to dismiss her conversion claim has merit. (*See* Resp. at 24 (submitting “that—
2 except with respect to the claim for conversion—[Defendants’] motion to dismiss should
3 be denied”).) Accordingly, the court grants this aspect to Defendants’ motion and
4 dismisses Ms. Woodell’s claim for conversion with prejudice and without leave to
5 amend.

6 **E. Unjust Enrichment and Constructive Trust**

7 The elements of a claim for unjust enrichment are: (1) a benefit conferred upon
8 the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the
9 benefit; and (3) the acceptance or retention by the defendant of the benefit under such
10 circumstances as to make it inequitable for the defendant to retain the benefit without the
11 payment of its value. *Young v. Young*, 191 P.3d 1258, 1262 (Wash. 2008). Similarly,
12 “[a] constructive trust arises where a person holding title to property is subject to an
13 equitable duty to convey it to another on the ground that he would be unjustly enriched if
14 her were permitted to retain it.” *Proctor v. Forsythe*, 480 P.2d 511, 514 (Wash. Ct. App.
15 1971). Defendants argue that because Ms. Woodell failed to adequately allege either a
16 RICO or a CPA claim, “there is no basis to find that . . . Defendants’ alleged retention of
17 a portion of the ‘Taxes & Fees’ is somehow ‘unjust’ or ‘inequitable.’” (MTD at 20.)

18 The court disagrees. The elements Ms. Woodell must allege for her RICO and
19 CPA claims are distinct from her unjust enrichment and constructive trust claims. *See*
20 *supra* § III.B, C. She need not allege either a RICO or a CPA claim to allege
21 “circumstances” rendering inequitable Defendants’ retention of the funds at issue for
22 purposes of her unjust enrichment claim. *See Young*, 191 P.3d at 1262. Similarly, she

1 need not allege either a RICO or a CPA claim to adequately plead a claim for
2 constructive trust. For a constructive trust, Ms. Woodell only needs to allege “some
3 element of wrongdoing.” *Baker v. Leonard*, 548, 843 P.2d 1050, 1055 (Wash. 1993).
4 Further, although such wrongdoing is ordinarily found in the form of “fraud,
5 misrepresentation, or bad faith, . . . [e]quity’s need for flexibility requires that
6 wrongdoing not be so limited.” *Id.*

7 Specifically, Ms. Woodell alleges that “a reasonable consumer would expect that
8 amounts collected as ‘Taxes & Fees’ would be the amounts imposed by taxing
9 authorities,” that such fees were “surreptitiously collected by Expedia or one of the other
10 Defendants,” that the amount collected “is *always* higher than the taxes remitted on the
11 hotel rooms,” and that “Expedia pockets the tax overcharge.” (Compl. ¶¶ 34-35, 39, 45.)
12 Thus, the court concludes that for purposes of her unjust enrichment and constructive
13 trust claims, Ms. Woodell has sufficiently alleged “wrongdoing” or “circumstances”
14 rendering Expedia’s retention of the fees at issue inequitable—to wit, the collection and
15 retention of a surreptitiously inflated charge.

16 However, to state a claim for either unjust enrichment or constructive trust, Ms.
17 Woodell must allege that the defendant “retain[s] the benefit” or “hold[s] title to the
18 property,” respectively. *See Young*, 191 P.3d at 1262; *Proctor*, 480 P.2d at 514. Here,
19 Ms. Woodell specifically alleges that “Expedia pockets the tax overcharge.” (Compl.
20 ¶ 39; *see also id.* ¶¶ 50 (“Expedia separately charged Plaintiff’s credit card . . . the ‘Taxes
21 & Fees.’”); 52 (“Minimum of \$8.31 illegally retained by Expedia as extra revenue.”); 53
22 (“Expedia is illegally retaining millions of dollars in overcharges annually.”).) Although

1 Ms. Woodell also alleges that “Defendants retained . . . these funds” and Defendants . . .
2 retained the overcharge as extra revenue” (*id.* ¶¶ 121, 128), these generalized, collective
3 allegations do not move her claims against EAN, Travelscape, and Hotels.com from the
4 mere possible to the plausible—particularly given her specific allegations concerning
5 Expedia. *See Iqbal*, 556 U.S. at 679. Accordingly, the court grants Defendants’ motion
6 to dismiss Ms. Woodell’s equitable claims for unjust enrichment and constructive trust
7 against EAN, Travelscape, and Hotels.com, but denies it with respect to Expedia.

8 **F. Leave to Amend**

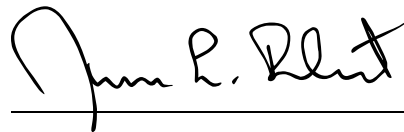
9 When dismissing a case for failure to state a claim, the district court “should grant
10 leave to amend . . . unless [the court] determines that the pleading could not possibly be
11 cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
12 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)) (internal quotation
13 marks omitted). Except with respect to her claim for conversion, *see supra* § III.D, the
14 court cannot conclude, that Ms. Woodell is unable to cure the defects in her claims.
15 Accordingly, the court grants Ms. Woodell leave to amend her complaint, including all of
16 her claims except for conversion, within 20 days of the filing date of this order.

17 **IV. CONCLUSION**

18 As detailed above, the court GRANTS in part and DENIES in part Defendants’
19 motion to dismiss (Dkt. # 15). The court DISMISSES Ms. Woodell’s claim for
20 conversion with prejudice and without leave to amend. The court DISMISSES her RICO
21 and CPA claims but GRANTS her leave to amend these claims. The court DISMISSES
22 her equitable claims for unjust enrichment and constructive trust against EAN,

1 Travelscape, and Hotels.com but GRANTS her leave to amend these claims. The court
2 ORDERS Ms. Woodell to file an amended complaint within 20 days of the filing date of
3 this order. If Ms. Woodell fails to timely file an amended complaint, the court will
4 dismiss her RICO and CPA claims with prejudice and will dismiss her equitable claims
5 for unjust enrichment and constructive trust against EAN, Travelscape, and Hotels.com
6 with prejudice.

7 Dated this 22nd day of July, 2019.

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10 JAMES L. ROBART
11 United States District Judge
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